

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

THEON HANSON,

Plaintiff,

v.

WASHINGTON STATE PATROL, et  
al.,

Defendants.

NO: 13-CV-0166-TOR

ORDER GRANTING DEFENDANT  
WASHINGTON STATE PATROL'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT is Defendant Washington State Patrol's Motion for Summary Judgment (ECF No. 26). This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

Plaintiff Theon Hanson alleges claims against Defendant Washington State Patrol ("WSP") including vicarious liability under 42 U.S.C. § 1983 for ratifying the Defendant officers' alleged unconstitutional conduct. ECF No. 1 at 2.

ORDER GRANTING DEFENDANT WASHINGTON STATE PATROL'S  
MOTION FOR SUMMARY JUDGMENT ~ 1

1 Presently before the Court is Defendant Washington State Patrol's motion for  
2 summary judgment seeking dismissal from this lawsuit under the doctrine of  
3 Eleventh Amendment immunity. ECF No. 26.

## 4 DISCUSSION

### 5 **A. Standard of Review**

6 The Court may grant summary judgment in favor of a moving party who  
7 demonstrates "that there is no genuine dispute as to any material fact and that the  
8 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In ruling  
9 on a motion for summary judgment, the court must only consider admissible  
10 evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9<sup>th</sup> Cir. 2002). The  
11 party moving for summary judgment bears the initial burden of showing the  
12 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.  
13 317, 323 (1986). The burden then shifts to the non-moving party to identify  
14 specific facts showing there is a genuine issue of material fact. *See Anderson v.*  
15 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). "The mere existence of a scintilla  
16 of evidence in support of the plaintiff's position will be insufficient; there must be  
17 evidence on which the jury could reasonably find for the plaintiff." *Id.* at 252.

18 For purposes of summary judgment, a fact is "material" if it might affect the  
19 outcome of the suit under the governing law. *Id.* at 248. Further, a material fact is  
20 "genuine" only where the evidence is such that a reasonable jury could find in

1 favor of the non-moving party. *Id.* The court views the facts, and all rational  
2 inferences therefrom, in the light most favorable to the non-moving party. *Scott v.*  
3 *Harris*, 550 U.S. 372, 378 (2007).

#### 4 **B. Eleventh Amendment Immunity**

5 The Eleventh Amendment generally bars a plaintiff from bringing suit  
6 against a state in federal court. *See* U.S. Const. Amend. XI; *Seminole Tribe of*  
7 *Florida v. Florida*, 517 U.S. 44, 54 (1996). There are two established exceptions  
8 to Eleventh Amendment immunity, namely: (1) legislative abrogation of immunity  
9 by express congressional intent under its Fourteenth Amendment powers, and (2)  
10 waiver of immunity by the state itself. *See Pennhurst State School v. Halderman*,  
11 465 U.S. 89, 99 (1984).

12 Defendant WSP argues that it is a state agency and is therefore entitled to  
13 immunity under the Eleventh Amendment. ECF No. 26 at 2-3. Plaintiff responds  
14 that Washington State has waived sovereign immunity pursuant to Wash. Rev.  
15 Code § 4.92.090 which provides “[t]he state of Washington, whether acting in its  
16 governmental or proprietary capacity, shall be liable for damages arising out of its  
17 tortious conduct to the same extent as if it were a private person or corporation.”  
18 ECF No. 31 at 3-4 (citing Wash. Rev. Code § 4.92.090).

19 As an initial matter, it is well settled that states and state agencies are not  
20 susceptible to suits under 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State*

1 *Police*, 491 U.S. 58, 71 (1989)(holding neither a State nor its officials acting in  
2 their official capacities are “persons” under § 1983); *Maldonado v. Harris*, 370,  
3 F.3d 945, 951 (9th Cir. 2004)(state agency not amenable to suit under § 1983).  
4 Defendant WSP is an agency of the State of Washington and is therefore not a  
5 “person” susceptible to suit under § 1983. *See* Wash. Rev. Code § 43.43.010.  
6 Moreover, as emphasized by Defendant WSP, the Eleventh Amendment bars suits  
7 against a state unless the state has specifically waived immunity. *See Will*, 491  
8 U.S. at 66. Contrary to the argument advanced by Plaintiff, the Ninth Circuit and  
9 Washington courts have found that “Washington’s waiver of immunity in its own  
10 courts does not waive its immunity in the federal courts.” *McConnell v. Critchlow*,  
11 661 F.2d 116, 117 (9th Cir. 1981)(internal citations omitted); *see also Rains v.*  
12 *State*, 100 Wash.2d 660, 667-68 (1983).

13 The Court finds that the Eleventh Amendment prohibits the Plaintiff from  
14 bringing the instant lawsuit against the WSP as a matter of law. Further, the WSP  
15 is not a “person” within the meaning of § 1983, and is therefore not susceptible to a  
16 § 1983 suit. For both of these reasons, the Court grants Defendant WSP’s motion  
17 for summary judgment.

18 **ACCORDINGLY, IT IS HEREBY ORDERED:**


- 19 1. Defendant Washington State Patrol’s Motion for Summary Judgment,  
20 ECF No. 26, is **GRANTED**.

1           2. Defendant Washington State Patrol is **DISMISSED** from this action.

2           The District Court Executive is hereby directed to enter this Order and  
3 provide copies to counsel.

4           **DATED** August 26, 2013.



  
THOMAS O. RICE  
United States District Judge